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## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

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IN THE MATTER OF THE FORMAL COMPLAINT  
 AGAINST ARIZONA PUBLIC SERVICE  
 COMPANY FILED BY STACEY CHAMPION AND  
 OTHER ARIZONA PUBLIC SERVICE COMPANY  
 CUSTOMERS.

DOCKET NO. E-01345A-18-0002

PROCEDURAL ORDER**BY THE COMMISSION:**

On January 3, 2018, Stacey Champion filed a formal Complaint against Arizona Public Service Company (“APS”) with the Arizona Corporation Commission (“Commission”) (“Champion Complaint”). The Champion Complaint, signed by Ms. Champion, was submitted in the form of a Change.org petition including Ms. Champion’s name and the names of 425 other individuals characterized as customers of APS.

On February 12, 2018, Mr. Adam Stafford filed a Notice of Appearance of Counsel on behalf of Ms. Champion.

Mr. Richard Gayer, a signatory to the petition and an APS customer, has been granted intervention.

At a Procedural Conference on February 15, 2018, Ms. Champion and APS appeared through counsel, and Mr. Gayer appeared *pro per*. Several issues were discussed, including Mr. Stafford’s position that he represents only Ms. Champion; Ms. Champion’s request to be appointed as class representative of the complaining APS ratepayers; Mr. Gayer’s request that he be allowed to represent his own claim; APS’s belief that the petition signers are not parties to the proceeding and its concerns for protecting ratepayer information; and the appropriate treatment of the claims in Mr. Gayer’s “Amended Complaint” that appear to go beyond the scope of the original complaint filed by Ms. Champion.<sup>1</sup>

<sup>1</sup> Mr. Gayer alleged violations of the Arizona Consumer Fraud Act and impermissible discrimination.

By Procedural Order dated March 5, 2018, it was determined that Ms. Champion's February 13, 2018, filing qualified as complying with APS's request for a more definite statement; that APS would have the opportunity to file an Answer or Motion in response to the revised Champion Complaint; and, further, that the time for APS to file such response would be stayed pending the parties' discussions on procedural questions.<sup>2</sup> The parties were directed to confer, with the goal of finding agreement on a process for moving forward, and to file a joint recommendation or request for procedural conference. It was determined that a ruling on Ms. Champion's request to be appointed class representative would be deferred until the parties had filed their procedural recommendations. Further, it was determined that Mr. Gayer's January 19, 2018, filing, captioned First Amended Complaint, raised claims that went beyond the scope of the claims raised in the Champion Complaint, and that the claims raised therein should be considered separately from the Champion Complaint, and stayed pending the outcome of the Champion Complaint. The parties were directed to file their procedural recommendations or a request for procedural conference by March 8, 2018.

On March 7, 2018, Mr. Gayer filed a Status Report. Mr. Gayer reported that the parties met but were unable to agree on a schedule and updated the status of his propounded Data Requests.

On March 8, 2018, Ms. Champion filed a Request for Procedural Conference, and reported that the parties were unable to agree on a process for moving forward.

Also on March 8, 2018, APS filed Procedural and Process Recommendations, which included the following schedule:

|  |                |
|--|----------------|
| APS Response to Revised Complaint                        | March 23, 2018 |
| Intervention   | April 13, 2018 |
| Simultaneous exchange of expert reports                  | May 4, 2018    |
| Simultaneous exchange of rebuttal reports (if necessary) | May 18, 2018   |
| Close of discovery                                       | June 1, 2018   |

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<sup>2</sup> Transcript of February 15, 2018, Procedural Conference at 15-17, 29.

File witness summaries, stipulated  
statements of facts (if any), pre-hearing  
motions, and hearing exhibits

June 15, 2018

Hearing

June 20-21, 2018

On March 16, 2018, Mr. Gayer filed a Response to APS's Procedural Suggestions. Mr. Gayer opposed APS's proposed procedural recommendations on the grounds that they did not provide adequate time for the complainants to adduce the required "sufficient evidence" for the hearing.

In light of the parties' inability to agree upon a process, by Procedural Order dated March 21, 2018, a Procedural Conference was scheduled for March 28, 2018, for the purpose of discussing a procedural schedule and establishing other procedural guidelines. In addition, APS was directed to file a Response to Ms. Champion's revised complaint by March 30, 2018.

On March 22, 2018, Ms. Champion filed a Response to APS's Procedural Process Recommendations. Ms. Champion agreed with APS that the parties were unable to agree on a specific path forward, but disagreed with APS's characterization of Ms. Champion's claims in its March 8, 2018, filing. In her Response, Ms. Champion recommended to extend APS's proposed schedule by 60 to 90 days.

The Procedural Conference convened as scheduled on March 28, 2018, at the Commission's offices in Phoenix, Arizona. Ms. Champion and APS appeared through counsel, and Mr. Gayer appeared *pro per*. At the Procedural Conference, Ms. Champion proposed the following modifications to APS's timetable:

APS Response to Revised Complaint

March 30, 2018

Intervention

April 13, 2018

Simultaneous exchange of expert  
reports

July 31, 2018

Simultaneous exchange of rebuttal  
reports (if necessary)

August 14, 2018

Close of discovery

September 3, 2018

File witness summaries, stipulated  
statements of facts (if any), pre-hearing  
motions, and hearing exhibits

September 17, 2018

Hearing

September 24, 2018

1       The parties discussed the proposed schedule and the need for a protective order in this matter  
2 to guard against the public disclosure of APS customers' personal data. In addition, the parties  
3 discussed whether the signatories to the Change.org petition are parties to this proceeding. Ms.  
4 Champion and Mr. Gayer believe that the APS customers, or anyone who could be a potential APS  
5 customer, who signed the petition are parties. APS believed by signing the petition, individuals allowed  
6 Ms. Champion to reach the required threshold required by A.R.S. §40-246 for bringing a complaint  
7 based on the unreasonableness of any rates or charges. APS questioned whether the signatories of the  
8 petition wanted to become parties, with the obligations associated therewith, such as being subject to  
9 discovery, or waiving certain rights.<sup>3</sup> All parties agreed that there should be a date certain for entities  
10 or individuals who signed the Change.org petition to either intervene (if APS's interpretation of their  
11 status is adopted) or request to become an active party (if the complainants' position is adopted).

12       The issue of who will be considered a party to the proceeding affects Ms. Champion's request  
13 to be designated as a class representative. Neither A.R.S. §40-246 nor Arizona Attorney General  
14 Opinion 69-6, address the issue of whether the petition signatories are parties, and no party has  
15 submitted legal authority on the issue.

16       Absent any indication within A.R.S. §40-246 to the contrary, the minimum signature  
17 requirement for bringing a complaint based on the unreasonableness of rates and charges, is the  
18 threshold for maintaining the action and does not automatically confer party-status on the signatories  
19 to the petition. If a signatory to the Change.org petition desires to become an active participant, they  
20 must file a request to intervene.

21       A.A.C. R14-3-1-4(C) allows the presiding officer to declare parties with substantially similar  
22 interests and positions to be a class and if they cannot agree on a representative, to designate one. Until  
23 and unless there are additional individuals or entities expressing a desire to become parties in this  
24 matter, with only two complainants, there is no need to appoint Ms. Champion as a class representative.  
25 If additional parties are granted intervention, the need to designate a class representative may become  
26 necessary in the interest of judicial efficiency.

27  
28 <sup>3</sup> Transcript of March 28, 2018 Procedural Conference at 7.

1 Because it is necessary to establish the parameters of the proceeding, it is reasonable to require  
 2 interested individuals or entities to file any requests to intervene by a date certain. Ms. Champion's  
 3 counsel proposed a deadline for intervention and neither Mr. Gayer nor APS objected or expressed  
 4 concern that the proposal was unreasonable.

5 Those APS customers, or potential APS customers, who signed the Change.org petition, may  
 6 opt to become parties to this proceeding by filing with the Commission a Request to Intervene, and  
 7 sending copies to all parties of record on the service list for this case by the intervention deadline  
 8 established herein.<sup>4</sup> By becoming intervenors, individuals will be accepting all the obligations of party  
 9 status, such as, but not limited to, participating in scheduled proceedings, responding to discovery  
 10 requests, complying with Commission procedural orders, and being bound by the Commission's final  
 11 Decision. Petition signatories who do not request to be active parties may file public comments and  
 12 may cooperate with Ms. Champion, or other party, as witnesses or in other support roles.

13 The following schedule was discussed and adopted at the March 28, 2018, Procedural  
 14 Conference:

|    |  |   |
|----|--|---|
| 15 | APS Response to Revised Complaint  | April 6, 2018                               |
| 16 | Intervention   | April 27, 2018                              |
| 17 | Simultaneous exchange of expert reports  | July 31, 2018                               |
| 18 | Simultaneous exchange of rebuttal reports (if necessary)   | August 17, 2018                             |
| 19 | Close of discovery   | September 3, 2018                           |
| 20 | File witness summaries, stipulated statements of facts (if any), pre-hearing motions, and hearing exhibits | September 17, 2018                          |
| 21 | Hearing  | On or about September 24, 2018 <sup>5</sup> |

22 In addition, APS was directed to circulate among the parties, and file with the Commission, a proposed  
 23  
 24

25 <sup>4</sup> The service list can be found by searching the docket number of this case using the eDocket function on the Commission's  
 26 website, AZCC.gov. Information on intervention and a fillable form for requesting intervention can be found on the website  
 27 by clicking on the "I Want To" tab and selecting "Intervene in a Utility Case" from the dropdown menu.

28 <sup>5</sup> The specific hearing date was taken under advisement.



1 Protective Order to be utilized in this proceeding.

2 On April 6, 2018, APS filed its Answer to the Revised Champion Complaint.

3 On April 13, 2018, Mr. Gayer filed a Response to APS's Answer to Revised Champion  
4 Complaint.

5 IT IS THEREFORE ORDERED that the **hearing in this matter shall commence on**  
6 **September 25, 2018, at 10:00 a.m.**, or as soon thereafter as is practical, **at the Commission's offices,**  
7 **1200 West Washington, Phoenix, Arizona 85007.**<sup>6</sup>

8 IT IS FURTHER ORDERED that **intervention shall be open to any signatory to the**  
9 **Change.org petition**, and governed by A.A.C. R14-3-105, except that **requests to intervene must be**  
10 **filed by May 11, 2018.**<sup>7</sup>

11 IT IS FURTHER ORDERED that **the parties shall file** with Docket Control in this docket,  
12 **direct testimony and any exhibits or expert reports**, to be used at the hearing, **by July 31, 2018.**

13 IT IS FURTHER ORDERED that the parties shall file with Docket Control in this docket,  
14 **rebuttal testimony and any exhibits or expert reports by August 17, 2018.**

15 IT IS FURTHER ORDERED that **the parties shall file witness summaries and stipulated**  
16 **statements of fact (if any) by September 17, 2018.**

17 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and  
18 regulations of the Commission except that **the deadline for serving discovery requests is September**  
19 **3, 2018.** Responses to discovery requests shall be made within 10 days of receipt; objections to  
20 discovery requests shall be made within 5 days of receipt;<sup>1</sup> the response time may be extended by  
21 mutual agreement of the parties involved if the request requires an extensive compilation effort.

22 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel  
23 discovery, any party seeking discovery may telephonically contact the Commission's Hearing Division  
24 to request a date for a procedural hearing to resolve the discovery dispute; that upon such a request, a  
25 procedural hearing will be convened as soon as practicable; and that the party making such a request  
26

27 <sup>6</sup> If additional days are required, the hearing will continue on September 26 and 27, 2018.

28 <sup>7</sup> The intervention deadline has been extended from the date discussed at the March 28, 2018, procedural conference to provide additional time for interested parties to file requests to intervene.

1 shall forthwith contact all other parties to advise them of the hearing date and shall at the hearing  
2 provide a statement confirming that the other parties were contacted.<sup>8</sup>

3 IT IS FURTHER ORDERED that any motions filed in this matter that are not ruled upon by  
4 the Commission within 20 days of the filing date of the motion shall be deemed denied.

5 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of  
6 the filing date of the motion.

7 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date  
8 of the response.

9 IT IS FURTHER ORDERED that **APS shall submit a form of Protective Order for this**  
10 **matter by May 4, 2018, and that any objections (if any) to the form of Protective Order shall be**  
11 **filed by May 15, 2018.**

12 IT IS FURTHER ORDERED that each party or prospective party shall **refer to the Procedural**  
13 **Order Regarding Consent to Email Service** issued in this matter on **January 10, 2018**, for additional  
14 information regarding the process to consent to service by email. Information regarding Consent to  
15 Email Service is also available on the Commission's website ([www.azcc.gov](http://www.azcc.gov)) by clicking on "I Want  
16 To" and then "Learn about Consenting to Email Service."

17 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
18 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

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28 <sup>8</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
2 Communications) applies to this proceeding and shall remain in effect until the Commission's Decision  
3 in this matter is final and non-appealable.

4 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or  
5 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
6 hearing.

7 DATED this 16<sup>th</sup> day of April, 2018.

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10 JANE L. RODDA  
11 CHIEF ADMINISTRATIVE LAW JUDGE  
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On this 16<sup>th</sup> day of April, 2018, the foregoing document was filed with Docket Control as a Procedural Order – Sets Hearing, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Adam L. Stafford  
WONG AND CARTER P.C.  
3003 N. Central Avenue, Suite 1000  
Phoenix, AZ 85012

Attorney for Stacey Champion  
astafford@wongandcarter.com  
sc@champion-pr.com

Kathy Moore Realtor@cox.net  
joephxaz@hotmail.com

k.sturgis@cox.net

volcanic@cox.net

rppdiehl@gmail.com

joebrk@gmail.com

oakchart@cox.net

diakun\_consulting@yahoo.com

hargis\_m@hotmail.com

mlicosati@me.com

d.ziegler@hotmail.com

rlvallee@hotmail.com

16024325526@mymetropcs.com

laureyn0550@aol.com

jacobwozniak@yahoo.com

pkocanjer@yahoo.com

timsmith545@gmail.com

almamalexander@gmail.com

andrea.jhe@yahoo.com

waegener@cox.net

betsy120867@yahoo.com

tmespo0712@gmail.com

leannevc2000@yahoo.com

mikej.schneider85@gmail.com

sylviarainey@cox.net

markdcoco@hotmail.com

editornado@gmail.com

italianpunker@gmail.com

turvater@gmail.com

nats55@ymail.com

charmadillo@gmail.com

azhistoryman@yahoo.com

jpargas@PhoenixUnion.org

billboatman38@gmail.com

bookdfrag@gmail.com

hsdeogun@gmail.com

greenwold@q.com

yealife@gmail.com

james.hanson1@icloud.com

lil\_kim\_011@yahoo.com

farlie7706@aol.com

bjwazii@aol.com

rickschartman@yahoo.com

claudia.solano07@gmail.com

mandyhenning32@yahoo.com

heckmansheldon@gmail.com

sbrekke825@gmail.com

rtbellinger5@msn.com

deyoung0415@gmail.com

ismata89@gmail.com

MattyHui@hotmail.com

santhen@cox.net

bret.wall@gmail.com

pnrichards@cox.net

letshavefunshopping@live.com

bettiegibson@gmail.com

tonysteech@gmail.com

raquelebriggs@gmail.com

nassar4@msn.com

ewkitts@gmail.com

rebeccarobertsaz@gmail.com

bret.wall@gmail.com

cdsmith46@hotmail.com

didevlin13@gmail.com

neidich99@yahoo.com

dhartson2070@gmail.com

christin.m.schmitt@gmail.com

awagen@cox.net

mkhutchings9@gmail.com

jcpenney009@gmail.com

patbas7@aol.com

vyare@q.com

shelly.daniels@nielsen.com

dwjiles@real-time-consulting.com

akelley38@hotmail.com

tracy.1977@hotmail.com

32651.pl@gmail.com

RFKinaz@cox.net

cynthiabuser@cox.net

snirdror@yahoo.com

Nstephenson@mbakeintl.com

briese@gmail.com

leroyandamy@hotmail.com

karina7c@gmail.com

jamesbldwn@yahoo.com

randi.wunch@gmail.com

**Consented to Service by Email**

1 Thomas Loquvam  
PINNACLE WEST CAPITAL CORPORATION  
400 North 5<sup>th</sup> Street, MS 8695  
2 Phoenix, AZ 85004  
Attorney for Arizona Public Service Company  
3 [Thomas.Loquvam@pinnaclewest.com](mailto:Thomas.Loquvam@pinnaclewest.com)  
[Melissa.Krueger@pinnaclewest.com](mailto:Melissa.Krueger@pinnaclewest.com)  
4 [Debra.Orr@aps.com](mailto:Debra.Orr@aps.com)  
[Kerri.Carnes@aps.com](mailto:Kerri.Carnes@aps.com)  
5 **Consented to Service by Email**

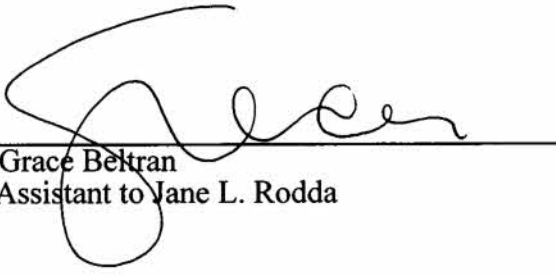
6 Richard Gayer  
526 W. Wilshire Drive  
7 Phoenix, AZ 85003  
[rgayer@cox.net](mailto:rgayer@cox.net)  
8 **Consented to Service by Email**

9 Warren Woodward  
200 Sierra Road  
10 Sedona, AZ 86336  
[w6345789@yahoo.com](mailto:w6345789@yahoo.com)  
11 **Consented to Service by Email**

12 Andy Kvesic  
Legal Division  
13 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
14 Phoenix, AZ 85007  
[LegalDiv@azcc.gov](mailto:LegalDiv@azcc.gov)  
15 [utildivservicebyemail@azcc.gov](mailto:utildivservicebyemail@azcc.gov)  
**Consented to Service by Email**

16 COASH & COASH, INC.  
17 Court Reporting, Video and  
Videoconferencing  
18 1802 North 7<sup>th</sup> Street  
Phoenix, AZ 85006  
19 **Mailed as a courtesy**

20  
21  
22  
23 By:

  
Grace Beltran  
24 Assistant to Jane L. Rodda  
25  
26  
27  
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